SUPREME COURT OF THE UNITED STATES.

No. 103.

McKEAN BUCHANAN, PLAINTIFF IN ERROR,

vs.

JAMES ALEXANDER.

IN ERROR TO THE CIRCUIT SUPERIOR COURT FOR THE COUNTY OF NORFOLK, STATE OF VIRGINIA.

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J. & G. S. Gideon, printers.

Pleas before the honorable Richard H. Baker, judge of the circuit superior court of law and chancery for Norfolk county, at the court-house of said county, on Thursday, the 10th day of November, in the year of our Lord one thousand eight hundred and forty-two.

Be it remembered, that, at another day, to wit, in the clerk's office of our said circuit superior court of law and chancery for Norfolk county, on the 29th March, 1842, came McKean Buchanan, by Robert C. Nicholas, esq., his attorney, and filed his petition, with an order thereon endorsed, awarding a supersedeas against James Alexander; which petition, with the endorsement thereon, is in the words and figures following, to wit:

To the honorable Richard H. Baker, judge of the circuit superior court of law and chancery for the county of Norfolk.

The petition of McKean Buchannon respectfully represents: That he is aggrieved by a final judgment of the county court of Norfolk county, rendered on the 15th day of November, 1841, against him as garnishee, in an attachment theretofore issued by a justice of the peace of said county against the estate of John Fardy, for a debt of $82 78 cts., due by said Fardy to a certain James Alexander. A transcript of the record of the judgment complained of is herewith presented, by which it will be perceived that said judgment was rendered against your petitioner for the sum of $65 20 cts., on account of moneys acknowledged by him to be in his hands as *purser of the United States*, (and not otherwise,) and which appeared upon *the* his books, *as purser aforesaid*, to be due to the said John Fardy. Your petitioner is advised that said judgment is erroneous, on various grounds, but he will content himself for the present with assigning the following errors, viz: The money in his hands, on account of which said judgment was pronounced against him as garnishee, was the money of the United States, and not of the said Fardy, and could never become *his* money, except in the mode prescribed by law and the regulations of the Navy Department; that the debt due the said Fardy for services was a debt due by the United States, and not by your petitioner, and was therefore not liable to the attachment.

And for the *the* said errors he prays a writ of supersedeas to the judgment aforesaid.

McKEAN BUCHANAN,
By his counsel.

I, Robert C. Nicholas, an attorney practising in the circuit superior court of law and chancery for the county of Norfolk, do certify,

that in my opinion, there is sufficient matter for reversing the judgment complained of in the foregoing petition.

R. C. NICHOLAS.

A supersedeas is awarded to the judgment awarded against the petitioner in the within record, upon the petitioner, or some other person, entering into bond, with sufficient security, in the clerk's office, in a penalty of double the amount recovered against the petitioner, conditioned according to law.

P. N. NICHOLAS,
A Judge of the General Court, and for the 21st circuit.

To the clerk of the superior court of law and chancery for Norfolk county.

The following is a copy of the record filed and referred to in the foregoing petition:

Know all men by these presents, that we, James Alexander and T. W. Johnson, are held and firmly bound to John Fardy, in the sum of one hundred and sixty-five dollars and $\frac{50}{100}$, to be paid to the said John Fardy, his certain attorney, his executors, administrators or assigns; for the true payment whereof we bind ourselves, jointly and severally, our *joynt* and several heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this 10th of November, 1841.

The condition of the above obligation is such, that whereas the above bound James Alexander hath this day applied to James E. Wilson, a justice of the peace for Norfolk county, for an attachment against the estate of the above named John Fardy, for the sum of $82 78, which attachment hath been granted, on previously entering into this bond, returnable to the next county court; if, therefore, the said James Alexander shall pay and satisfy all costs which shall be accorded to the said John Fardy, in case the said James Alexander shall be cast in the said suit, and also all damages which shall be recovered against the said James Alexander for his suing out the said attachment, then the above obligation to be void, else to remain in full force and virtue.

JAS. ALEXANDER, [SEAL.]
THOS. W. JOHNSON. [SEAL.]

Signed, sealed, and delivered before—
JAS. E. WILSON.

NORFOLK COUNTY, *to wit:*

To Thos. R. Jordan, constable.

Whereas James Alexander hath this day complained before me, James E. Wilson, a justice of the peace for the said county, that John Fardy is indebted to him in the sum of eighty-two dollars and seventy-eight cents, due by account; and that the said John Fardy absconds or conceals himself, so that the ordinary process

of law cannot be served on him; and the said James Alexander having given *bound* and security according to law: These are, therefore, in the name of the Commonwealth, to require you to attach the estate of the said John Fardy, or so much thereof as shall be of value sufficient to satisfy the said sum of eighty-two dollars and seventy-eight cents, and the costs, and such estate, so attached in your hands, to secure or so to provide, that the same may be liable to further proceedings thereon, to be had at the next court to be held for this county, and that you then and there make return how you have executed this warrant.

Given under my hand and seal, this 10th day of November, 1841.

JAMES E. WILSON, [SEAL.]

NORFOLK COUNTY, *to wit:*

Pursuant to the within warrant I have attached, by levying on the goods and chattels of the within named John Fardy, in the hands of McKean Buchanan, or so much thereof as may be sufficient to satisfy the said debt and costs, and have summoned the said garnishee to appear at the next county court, to be held for this county, on Monday next, the 15th of November, 1841.

THOS. R. JORDAN, *Constable.*

At a court held for Norfolk county, the 15th day of November, 1841.

JAMES ALEXANDER vs. JOHN FARDY. } Attachment.

James Alexander having taken out an attachment, according to law, against John Fardy, an absconding debtor, and Thomas R. Jordan, a constable of this county, to whom the said warrant of attachment was directed, having made return that he had executed the said attachment on the goods, chattels, and moneys of the said John Fardy, in the hands of McKean Buchanon, and summoned him as a garnishee, this day came, as well the plaintiff, by his attorney, as the said garnishee, in his proper person, who, being sworn, declared, that he held in his hands, and there was due upon his books, as purser of the United States ship Constitution, at the time of the service of the said attachment, as well as at this present time, the sum of sixty-five dollars and twenty cents, and no more; and the said defendant not appearing, though solemnly called, and it appearing, by the testimony of a witness, that the defendant is indebted to the plaintiff in the sum of eighty-one dollars, it is considered by the court, that the plaintiff recover against the defendant the said eighty-one dollars, and his costs by him in that behalf expended; and it is further considered, that the plaintiff recover against the said McKean Buchanan, purser as aforesaid, the sum of sixty-five dollars and twenty cents, the amount of moneys in

his hands, admitted by the said Buchanan to be in his hands, and belonging, as aforesaid, to the said John Fardy, &c.

Costs—Clerk - - - - - - -	$1 93
Attorney - - - - - -	2 50
Const. - - - - - - -	84
	$5 27

Upon the foregoing judgment, an execution of fi. fa. issued on the 2d day of December, 1841, against the goods and chattels of the garnishee.

The following is a copy of the account upon which the foregoing proceedings are founded.

Mr. Fardy to Jas. Alexander, Dr.

Nov.	1	To cash 15s., clothing $8 75 - -	$11 25
"	2	" cash 12s. - - - -	2 00
"	3	" cash 12s., do. 6s. - - -	3 00
"	"	" 1 fine coat $18, shirt 9s., hdkf. 6s., -	20 50
"	4	" washing 3s., cash 6s., treat 1s. 6d. -	1 75
"	"	" cash 6s. - - - - -	1 00
"	5	" cash 6s., do. 6s., p'd Caphart $7 50 -	9 50
"	6	" cash 1s. 6d. - - - -	25
"	6	" cash 6s., shoes 9s. - - -	2 50
"	7	" cash 18s. - - - -	3 00
"	8	" cash 12s. - - - -	2 00
"	"	" paid Glass and Goodridge - -	12 50
"	"	" paid Caphart - - - -	5 25
"	"	" washing 3s. - - - -	50
"	8	" cash lent at different times out doors -	1 78
"	"	" 1½ week's board at 24s. - - -	6 00
			$82 78
		Deduct $1 78 - - - - -	1 78
			$81 00

Copy, record.—Test: ARTHUR EMMERSON, Jr.,
D'y Clerk.

And at another day, to wit: at a special term of the circuit superior court of law and chancery, for Norfolk county, held at the court-house, on the 20th day of July, 1842.

McKean Buchanan, plff.,
against
James Alexander, deft.

Upon a supersedeas to *in* judgment of the county court of Norfolk, rendered on the 15th day of November, 1841, upon an attachment

against John Fardy, an absconding debtor, in favor of James Alexander, whereby it was considered that the plaintiff recover against McKean Buchanan, purser of the United States navy, the sum of sixty-five dollars and twenty cents, the amount of moneys in his hands, admitted by the said Buchanan to be in his hand, and belonging, as aforesaid, to the said John Fardy.

By consent of the parties, by their attorneys, it is ordered that this suit be continued till the next court.

And now, at this day, to wit, at a circuit superior court of law and chancery, continued by adjournment, and held for the said county of Norfolk, at the court-house, on the same day and year first herein before mentioned, to wit, on Thursday, the 10th day of November, 1842.

This day came the parties, by their attorneys, and thereupon the transcript of the record of the judgment aforesaid being seen and inspected, it seems to the court here, that there is no error in the said judgment. Therefore it is considered that the same be affirmed, and that the defendant recover against the plaintiff damages, according to law, for retarding the execution thereof, and his costs by him about his defence in this behalf expended.

Plaintiff—Costs - - -	$4 07
Defendant—Costs - - -	6 99

STATE OF VIRGINIA, *Norfolk county, to wit:*

I, Arthur Emmerson, clerk of the circuit superior court of law and chancery for the said county of Norfolk, in the State of Virginia, do hereby certify, that the foregoing is a true transcript of the record and proceedings upon a supersedeas lately depending in the said circuit superior court of law and chancery, between McKean Buchanan, plaintiff, and James Alexander, defendant, with all things touching the same, as fully and wholly as they now exist among the records of my office.

In testimony whereof, I hereto set my hand, and annex the seal of the said court, this sixteenth day of May, one thousand [SEAL.] eight hundred and forty-three, in the 67th year of the Commonwealth.

ARTHUR EMMERSON, *C. C.*

VIRGINIA, *Norfolk county, to wit:*

I, Richard H. Baker, only judge of the circuit superior court of law and chancery for the said county of Norfolk, in the State of Virginia, do certify, that Arthur Emmerson, who hath given the preceding certificate, is clerk of the said court, and that his said attestation is in due form.

Given under my hand, this sixteenth day of May, one thousand eight hundred and forty-three, in the 67th year of the Commonwealth.

RICH'D H. BAKER.

Copy of record,	$2 52
Seal, &c.	1 36
	$3 88

UNITED STATES OF AMERICA, *to wit :*

The President of the United States, to the honorable the judge of the circuit superior court of law and chancery for the county of Norfolk, in the State of Virginia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said circuit superior court of law and chancery for the said county of Norfolk and State aforesaid, before you, between McKean Buchanan, plaintiff, and James Alexander, defendant, upon a writ of supersedeas to a judgment of the county court of Norfolk, the said circuit superior court of law and chancery being the highest court in the said State in which a decision could be had in said suit, a manifest error hath happened, to the great damage of the said McKean Buchanan, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom [of] the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the ninth day of May, in the year of our Lord one thousand eight hundred and forty-three.

HENRY GIBSON, [SEAL.]
Clerk of the Cir. Ct. of the U. S. for the 4th Cir. and Dist. of Virginia.

Allowed by me, P. V. DANIEL.

United States of America to James Alexander, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit superior court of law and chancery, for the county of Norfolk, in the State of Virginia, wherein McKean Buchanan is plaintiff in error, and James Alexander is defendant in error, to show cause, if any there be, why judgment rendered against the said McKean Buchanan, as in the said writ of